

**REMARKS/ARGUMENTS**

In light of the above amendments and following remarks, reconsideration and withdrawal of the rejections of the application are respectfully requested.

The instant After-Final Amendment is being made to facilitate prosecution of the application and does not require a further search. Therefore, it is respectfully requested that the instant Amendment be entered.

**I. STATUS OF THE CLAIMS AND FORMAL MATTERS**

Claims 29, 32-36, 44 and 47-55 are pending in this application. Claims 29 and 36 are allowed and claims 32 and 34 are objected to. Claims 33, 35, 44 and 47-55 have been rejected in the Office Action. In this response, claims 44, 52 and 54 have been amended to recite that the instant invention is for the "through water" transportation of cargo. No new subject matter has been added as a result of the amendment to the claims. Support for the amendments can be found in the specification on page 1, line 14 to page 2, line 22.

It is submitted that these claims are patentably distinct from the prior art cited by the Examiner, and that these claims are in full compliance with the requirements of 35 U.S.C. §112. The remarks made herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112, but rather the amendments and remarks made herein are simply for clarification and to round out the scope of protection to which Applicants are entitled.

Initially, the Examiner is thanked for allowing claims 29 and 36 and indicating that claims 32 and 34 contain allowable subject matter. The Examiner is also thanked for withdrawing the objection to the drawings.

Lastly, the Examiner is thanked for granting Applicants an After-Final interview. In accordance with M.P.E.P. § 713.04, included is a summary of the interview as understood by the

Applicants. The telephone interview occurred on August 19, 2005. Participants in the interview included Examiner Andrew D. Wright and Ronald R. Santucci and Anthony D. Mustillo, attorneys for the Applicants. The interview was initiated by the Applicants to discuss the rejections in the Final Office Action dated July 15, 2005. Applicants reiterated their arguments that U.S. Patent No. 6,021,915 to Shimozone et al. ("Shimozone") and U.S. Patent No. 4,055,201 to Fowler et al. ("Fowler") are nonanalogous art and therefore cannot be considered pertinent prior art under 35 U.S.C. § 103. Examiner Wright reiterated his arguments included in the Final Office Action that the references were analogous art. Possible claim amendments were discussed that may render Shimozone and Fowler non-analogous art. No agreement as to specific claim language was reached. In addition, the product-by-process limitations were discussed.

## **II. THE REJECTIONS UNDER 35 U.S.C. § 103(a)**

In numbered paragraph 2 of the Action, claims 44 and 51 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 2,997,973 to Hawthorne et al. ("Hawthorne") in view of Shimozone.

In paragraph 4 of the Action, claims 47-50, 54 and 55 are rejected under § 103(a) as allegedly being unpatentable over Hawthorne in view of Fowler.

Lastly, in paragraph 10 of the Action, claims 33, 35, 52 and 53 are rejected under § 103(a) as allegedly being unpatentable over Hawthorne in view of Fowler. The rejections are traversed for at least the following reasons.

As discussed during the interview, independent claims 44, 52 and 54 have been amended to recite, *inter alia*, a "large flexible fluid containment vessel for the through water transportation and/or containment of cargo comprising a fluid or fluidisable material." As amended, the claims

require the flexible fluid containment vessel ("FFCV") of the instant invention to transport fluid or a fluidisable material through water such as the ocean. Transportation of the FFCV of the instant invention through water can be achieved, for example, by using a tug boat to pull or tow the FFCV. Page 1, line 30 to page 2, line 22. Since the FFCV of the instant invention is being towed through water, certain design factors needed to be considered, such as the distribution of the towing load and the stability of the FFCV. Page 10, lines 20-25. In addition, the FFCV is designed to have a tapered bow and stern in order insure that the FFCV will remain stable during towing, thereby avoiding a towing phenomenon known as snaking, which can destroy the FFCV. Page 10, line 26 to page 11, line 2. Lastly, the force acting on the FFCV needed to be minimized. *See* page 10, lines 26-27. Applicants submit that neither the Shimozono nor Fowler structures are used to transport a fluid contained therein through water and therefore, the above discussed design considerations did not need to be considered in the design of the Shimozono and Fowler structures.

As such, Applicants contend that the Shimozono and the Fowler references are nonanalogous art to the present invention and Hawthorne, and therefore cannot be properly applied to reject Applicants' claims. Applicants' invention is directed to large fabric FFCVs for the through water or ocean transportation of cargo (fresh water) as well as other fluids having a density less than that of salt water. Page 6, lines 4-8. In the instant invention, the FFCVs can have a length of 300 feet or more and a diameter of 40 feet or more. Page 6, lines 19-23. Hawthorne is directed to tubular shaped vessels, the size of which are similar to that of barges, for transporting or storing liquids or fluidisable solids. *See* col. 1, lines 11-19. In Hawthorne, the length of the vessel is greater than 20 times its beam. Col. 1, lines 26-27. Therefore, Hawthorne is directed towards large floating structures for ocean transportation.

In contrast, Shimozono is directed to foldable water tanks used to hold water. In general, the diameter of the water tanks range from 1 to 10 meters and the height is from 0.5 to 2.0 meters. Col. 2, line 65 to col. 3, line 2. Fowler is directed to a tubular shaped fluid-dispensing container for hand holding used to hold and dispense a fluid contained therein. *See* col. 2, lines 57-58. When the structure of Fowler is formed into a tubular shape of radial expansibility, the relaxed circumference of the tubular shape is preferably from 1.5 to 12.0 cm. The relaxed length of the tubular shape will generally be from 8.9 to 19.0 cm. When the tubular shape of Fowler is of longitudinal expansibility, the relaxed circumference is preferably from 4.0 to 36.0 cm and the relaxed length is preferably from 1.0 to 9.4 cm. Col. 12, lines 22-33.

It is well established that nonanalogous art cannot be considered pertinent prior art under 35 U.S.C. § 103 and therefore cannot be relied upon as a "'basis for rejection of an applicant's invention'." *See* M.P.E.P. § 2141.01(a) (quoting *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992)). The determination as to whether a reference is analogous art is two fold. First, it must be decided if the reference is within the field of the inventor's endeavor. If it is not, it must then be determined whether the reference is "reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d at 1446. The Federal Circuit has held:

A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem.

*In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992).

In the present case, the Shimozono and the Fowler references do not satisfy the above well established test of a reference falling into the category of analogous art. First, Shimozono

and Fowler are not within the field of the instant inventors' endeavor. As previously discussed, the instant invention relates to very large FFCVs used to transport liquids through water and Hawthorne relates to large tubular shaped vessels for the transport of liquids . By contrast, Shimozono relates small, portable water tanks and Fowler relates to small tubular shaped fluid dispensing containers.

Paragraph 19 of the Action asserts that Shimozono and Fowler are in the same field of endeavor as the instant invention and Hawthorne. The Action further asserts that "scale is generally easily modified by the skilled artisan" and that Shimozono and Fowler "disclose essentially the same structure, a fabric for holding water, on a much smaller scale." Office Action, Page 7, ¶ 19. As such, the Action asserts that they are in the same field of endeavor as the instant invention and Hawthorne. *Id.* In addition, the Action asserts that Shimozono and Hawthorne address the same problem as the instant invention despite their small size, namely how to construct a fabric container for holding water. *Id.*

Applicants respectfully disagree. As discussed above, Shimozono and Fowler do not disclose the same structure and are not directed at addressing the same problem as the instant invention. The instant invention is not "a fabric container for holding water." The instant invention is a vessel for water or ocean transportation of a fluid contained therein. As such, the design considerations for the instant FFCV (previously discussed) were much different than those of Shimozono and Fowler. Therefore, Shimozono and Fowler are not in the same field of endeavor and they are not directed at addressing the same problem as the instant invention or Hawthorne.

Further evidencing the different fields of invention between the instant invention and Hawthorne and the Shimozono and Fowler references are the USPTO classifications of the

references. *See* M.P.E.P. § 2141.01(a). In the Office Communication dated September 16, 2002 for the parent application (application serial No. 09/921,617), detailing the restriction requirement, claims 29-36 were classified in class 114. This classification is also confirmed under the Application Data tab on the PAIR system for the instant application. Hawthorne is also classified in class 114. In contrast, Shimozono is classified in classes 220, 383 and 4 and Fowler is classified in classes 139, 57, 66, 150 and 428. The classes are defined as follows:

Class 114 (Applicant's invention and Hawthorne): Ships

Class 383 (Shimozono): Flexible Bags

Class 220 (Shimozono): Receptacles

Class 4 (Shimozono): Baths, Closets, Sinks and Spittoons

Class 139 (Fowler): Textiles: Weaving

Class 57 (Fowler): Textiles: Spinning, Twisting and Twining

Class 66 (Fowler): Textiles: Knitting

Class 150 (Fowler): Purses, Wallets and Protective Covers

Class 428 (Fowler): Stock Material or Miscellaneous Articles

Accordingly, Shimozono and Fowler are neither within the field of the instant inventors' endeavors, nor is it within the field of the Hawthorne reference applied in combination.

Secondly, Shimozono and Fowler are not reasonably pertinent to the particular problem with which the instant inventors were involved, thus failing the second prong of the test. As previously stated, Shimozono is directed to portable water tanks and Fowler is directed to small tubular shaped fluid dispensing containers. On the other hand, the instant invention is directed to the problems associated with through water or ocean transportation of liquids using very large FFCVs. It is clear that the matters with which Shimozono and Fowler deal would not logically

have commended itself to the instant inventors' attention in considering the problem solved by the instant invention.

Therefore, as Shimozone and Fowler fail both prongs of the analogous art test, Shimozone and Fowler are nonanalogous art to the instant invention and cannot be properly applied in an obviousness analysis.

Moreover, while the USPTO classification is some evidence of analogy, similarities and differences in structure and function carry more weight. *In re Ellis*, 476 F.2d 1370, 1372 (C.C.P.A. 1973). As previously discussed, the Applicants' invention is directed to the transportation of large FFCVs for the through water or ocean transportation of fluids contained therein. In contrast, neither Shimozone nor Fowler perform a function similar to ocean transportation of fluids. Instead Shimozone is directed to foldable portable water tanks for use on land and Fowler is directed to hand held fabric fluid dispensing containers. Both structures are extremely small in relation to the instant invention. Additionally, neither structure is designed to be towed through water and therefore their structures are different from the instant invention as well. One example is that the foldable water tank of Shimozone is not a closed structure. As depicted in Figure 4, the water tank has an open top. In contrast, the structure of the Applicants' invention is completely enclosed. Therefore, liquid contained within the instant invention is completely enclosed within the structure and is protected from the surrounding environment. Hence, the differences in structure and function of the cited references are further evidence of nonanalogous between Applicants' invention and Shimozone and Fowler.

For at least the foregoing reasons, it is respectfully submitted that Shimozone and Fowler are nonanalogous to the Applicants' invention and Hawthorne and therefore should not have been

relied upon as a basis for rejection of the Applicants' invention. Therefore, reconsideration and withdrawal of the § 103(a) rejections are respectfully requested.

Statements appearing above with respect to the disclosures in the cited references represent the present opinions of the Applicant's undersigned attorney and, in the event that the Examiner disagrees with any such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the respective reference providing the basis for a contrary view.

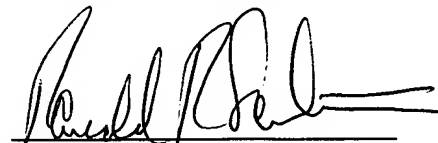
### CONCLUSION

In view of the foregoing, Applicants submits that the instant claims should be allowed and that the instant application is now in condition for allowance. Applicants further submit that this After-Final Amendment does not require an additional search. Therefore, Applicants respectfully request entry of this After-Final Amendment and favorable reconsideration of the application, withdrawal of the rejections, and prompt issuance of the Notice of Allowance.

Please charge any fees incurred by reason of this response and not paid herewith to Deposit Account No. 50-0320.

Respectfully submitted,  
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